

Notes on the  
**Constitutional  
Reconstruction  
of the Empire**

By the Right Honourable

**J. A. MURRAY MACDONALD**

M.P.

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NOTES ON THE CONSTITUTIONAL  
RECONSTRUCTION OF THE EMPIRE



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1917

"When the war comes to an end, when the reign of peace is re-established, we shall have to take stock, as an Empire, of our internal relations. . . . The fabric of the Empire will have to be re-fashioned."

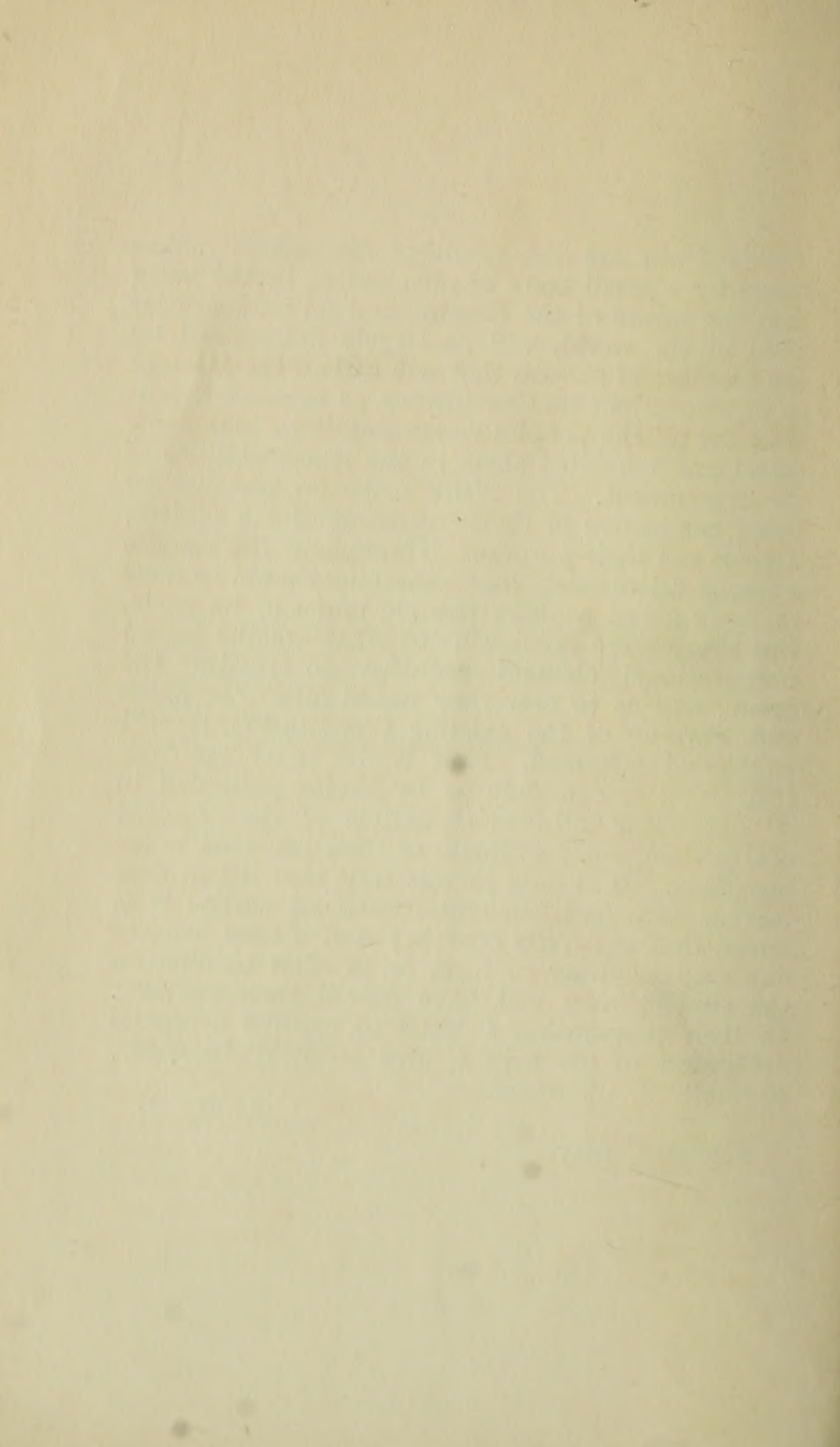
MR. ASQUITH, at Ladybank, *June 14, 1916.*



THESE *Notes* are the result of discussions undertaken by a small body of men united in the belief that the future of the Empire, and its influence for good in the world, will be largely determined by the measure of success that will attend the attempt so to reconstruct its Constitution as to make it possible for all the peoples composing it to take some direct and regulated share in the responsibilities of its government. The *Notes* make no pretence to being exhaustive in their treatment of the subject. That is not their purpose. Throughout the Empire a strong desire exists that something should be done to bring about a closer organic union of its parts. But everywhere opinion as to what are the actual constitutional changes required to realize the desire, and as to how they would affect the spirit and working of the existing Constitution, is still vague and unformed. If it is ever to emerge from this state, it can only be by having presented to it some clear and concise outline of the required changes and some estimate of their probable working effect. It is only in this way that it can ever become firm and coherent. Such an outline it is hoped that the *Notes* contain ; and if they help, in any degree, either to form or to elicit opinion on the subject they will have served their purpose. In their preparation I desire to express a special obligation to the help I have received from Mr. Kenneth E. Chalmers.

J. A. M. M.

*February, 1917.*





# Notes on the Constitutional Reconstruction of the Empire

## INTRODUCTORY

1. Hitherto responsibility for the guidance of the destinies of the British Empire has rested on the peoples and the Parliament of the United Kingdom. Before the war it was generally recognized that it could not indefinitely continue to rest exclusively there ; and that its basis must, sooner or later, be so widened as to enable the other peoples of the Empire to assume a share in it. The subject, however, was never seriously considered by high authorities either in the United Kingdom or in the countries beyond the seas. But the war will not leave us just where it found us. It has brought the Empire into the foreground of our life. It has made us feel, as nothing else in our history has ever done, that we are in truth all members one of another. The war, moreover, will not leave our relations with the other peoples of the world, or their relations with us, just where it found them. To these peoples, as to us, it has been the means of revealing a new though still vague and uncertain sense of responsibility for the maintenance of a common peace and the furtherance of a common civilization. When it is over, a new epoch in the history of international relations will open. There is no great people, if it is to retain its greatness, that will not be forced to review the principles by which its internal economy has been regulated, and the means by which its influence in the world is to be made effective in the new epoch ; and among the great peoples there is none, because of the vast extent of their interests and the varied nature of their

responsibilities, upon whom the need for review makes so imperative a call as upon the peoples of the British Empire. It is an Empire hitherto held together by a pervading spirit of justice and freedom. But that spirit can never attain to its fulness, nor exercise its due influence on international relations, so long as we are contented to let it find expression only in its present severed and disjointed forms. It is our highest duty, our most binding obligation, to try, at least, to incorporate it in a single organ of expression, through which its full meaning and purpose may be made progressively manifest both to ourselves and to the other peoples of the world.

2. The difficulties that stand in the way of forming such an incorporating organ of the life of the peoples of the British Empire are greater than those that attended the formation of any similar union now known to the world. The successful federation of the United States of America, the federation of the provinces of Canada, of the states of Australia, and of the provinces of South Africa, may, indeed, encourage us to seek for some practicable scheme of common government, consistent with the varying facts and circumstances of our life; but in the task of framing such a scheme there is little help, beyond the stimulus of example, to be got from the federal unions already in existence either within or without the limits of the Empire. The task of devising them was of a totally different kind from ours, and vastly less complicated in its character and conditions.

3. In our case the countries to be united are not contiguous one to another, as has been the case in every other union, hitherto accomplished, of previously separated communities of men. They are scattered in all the four quarters of the globe. They are inhabited by a great variety of races of men, not all on the same level of historical development. They have not all the same political rights, nor have they all the same political responsibilities. They have not a common system of law, nor do the varying systems find their ultimate sanction in the same ideas of justice. They have different religions, different histories, different traditions, and different habits and customs of life. An Empire thus composed, an Empire embracing within it communities of men representing every stage in



the known development of human life, an Empire illustrating in its several parts the operative effect of all the great spiritual and material influences and conditions that guide and discipline the life of men, such an Empire is a world in itself; and the task of bringing its peoples into an incorporating union may be truly said to be as difficult and complicated as would be the task of bringing all the peoples of the world into a similar union for the guidance of the life of mankind as a whole.

4. But great as are its difficulties and complications, they are not insuperable. We enter upon it with one great dominating fact favourable to its accomplishment. A union already actually exists, a union not expressed in a regulated constitutional form, but resting on a spirit of mutual trust and confidence that runs through and that animates each and all of the peoples composing it. The strength of this spirit has been the great revelation made to us through the agency of the war. The revelation culminates one period of our history. It opens up to us the vistas of another.

5. This spirit, though it has been revealed to us by the war, has not been suddenly imported into the life of the peoples of the Empire by the war or by its attendant circumstances. It is the rich fruit of wise government. In an Empire, composed as ours is, there is no other source from which it could come, neither community of race, nor of language, nor of interest, outside the interest all have in the preservation and security of their government.

6. But the government that has produced this fruit has not worked on a uniform plan in all parts of the Empire. It has everywhere adapted itself to the varied character and conditions of life of the peoples governed. It has been guided and controlled in all its operations by a spirit of respect for the differences of character and condition prevailing in the several parts, by a desire to understand them, and to rule in accordance with them. In India, for example, the conditions of life are largely fixed and immovable. They have been handed down unchanged from age to age, sanctioned and maintained by religious conceptions of life peculiar to her people. What she demands from her government is an acceptance of these conditions and a faithful administration of them. In such a government she finds her satis-

faction. In the United Kingdom, to take another example, the conditions of life are subject to constant change. In no two generations of men are they ever the same. And the change takes place in obedience to the dictates of a general conception of life, and of the destinies of the human race as a whole, which teaches her people that the good life is not to be found in the simple, loyal, and unquestioned acceptance of what has been handed down to them from the past, but has to be sought after and won by constant sustained and disciplined action and reaction of individual and social effort on each other. The operating and sanctioning principles of the government of such a people cannot be the same as those of the government of the people of India. To make them the same would be to destroy all the living fundamental characteristics of their life, and to replace them with spiritual death and stagnation. While to apply the principles of the government of the United Kingdom to India would be to disrupt the whole social and religious fabric of the life of her people. Whether some day India will be prepared to face this, and to renew the mighty movements and changes of life that must have preceded and led up to her present form of civilization and her age-long quiescent acceptance of it, is a question that must be left to the future. In the meantime, what she and we have to realize is that to sanction her government by the same means as we sanction ours, or ours by the same means as hers, would be irreparably to injure both.

7. These are two examples of the difficulties and complexities that must attend the effort to bring the several parts of the Empire into a closer constitutional union; and they might be multiplied. They prove that the union, if it is to be effected, cannot be one of exact uniformity in relation to all the parts of the Empire. To ignore them would be to ignore all the lessons of that experience from which the desire for closer union itself springs. It would be to repeat, though in another form, our experiences of the eighteenth century, when, by our failure to respect the spirit and the conditions of life prevailing in the North American Colonies, we disrupted an Empire which might otherwise, by itself, have been responsible, two and a half years ago, for the maintenance of the peace of the world.



THE PRESENT CONSTITUTIONAL FABRIC OF THE  
EMPIRE

8. The Empire, with respect to its present constitution, may be divided into three parts: the United Kingdom; the British Dominions beyond the seas; and the Dependencies, Crown Colonies and Protectorates. In the first and second, governments are controlled by Parliaments representing the peoples. In the third they are controlled by the Parliament of the United Kingdom. On this Parliament, also, the government of the Empire as a whole depends.

9. The Parliament of the United Kingdom at present acts in four capacities. In one capacity it acts as the local legislature for the peoples of England, Scotland, and Ireland, providing for their several and historically distinct domestic interests. In another it acts as the local legislature for those domestic interests common to the three peoples. Its functions, in these two capacities, correspond with and are the same in scope as the functions of the Parliaments of the Dominions. In a third capacity it acts as the finally responsible legislature for the government of the Dependencies, Crown Colonies and Protectorates. While in a fourth it stands before the world as the supreme presiding authority over the destinies of the Empire at large.

## THE ORGAN OF IMPERIAL UNION

II. From this survey it will be seen that a closer constitutional union, embracing all parts of the Empire, means primarily a change in the constitution of the United Kingdom. It means that the Parliament of the United Kingdom must divest itself of two at least of the four separate capacities in which it now acts, and that it must create at least one new Parliament to act in the capacities of which it does divest itself. Either it must divest itself of the two capacities in which it acts as the local legislature of the peoples of the United Kingdom and create at least one new Parliament to act in these capacities; or it must divest itself, or consent to be divested, of the capacities in which it acts as the power finally responsible for the government of all the Dependencies and of the Empire as a whole, and create, or consent to the creation of, a new

Parliament to which action in these capacities shall be entrusted. When a decision on one or other of these alternative courses has been arrived at, there would then arise the question of the terms and conditions of the new union.

12. It is held by some of those who have thought and written about the subject that the peoples of the Dominions are not yet prepared for so large and organic a change as is implied in the institution of a strictly Imperial Parliament. It is said that among them opinion on the subject though favourable is still unformed, and that they will shrink from undertaking the new, unknown and indefinite obligations involved in the assumption by them of a joint responsibility with the peoples of the United Kingdom for the government of the Empire. It is thought, therefore, that it would be better, in the first instance, not to disturb the existing constitutional arrangements of the Empire, but tentatively to provide for its common concerns by the creation of a new, extra-constitutional body to be called a Council. This proposal has been presented in three different forms, which it may be well to examine before proceeding with the further consideration of the proposal that the organ of union should be an Imperial Parliament.

#### A FEDERAL COUNCIL

13. The first is that, by an expressed and statutory agreement between all parts of the Empire, a Federal Council should be instituted; that this Council should be composed of representatives of the several governments of the Empire; that it should be entrusted with full legislative and executive powers to deal with all matters exclusively Imperial in their scope and character; and that it should derive the revenues necessary to carry on Imperial services from contributions made by the several governments of the Empire in proportions varying in accordance with some previously fixed and accepted standard of relative capacity.

#### A DOMINIONS COUNCIL

14. The second is that a Dominions Council should be instituted, composed of delegates appointed by the several Dominion Legislatures; that Ministers of the Crown in

the existing Imperial Government should have the right to be present at, and take part in, the proceedings of the Council, but should not have the right to vote in any divisions ; that the cost of Imperial services should be provided for by contributions from the several self-governing parts of the Empire, including the United Kingdom, proportioned in accordance with some previously fixed and accepted standard of relative capacity ; that the estimated appropriations for Imperial services from the respective revenues of the United Kingdom and the several Dominions should be submitted, with full explanations, by the Imperial Government to the Council ; and that the Council should thereupon have the power, by a majority vote, to accept or reject the appropriations as a whole, the vote of the majority being binding on the minority.

#### AN IMPERIAL COUNCIL

15. The third is that an Imperial Council should be created, composed of members of the several Governments of the Empire, including the Government of the United Kingdom ; that the members of the Council should consult together on all matters affecting the common interests of the Empire, including expenditure on Imperial services ; that with a view to simultaneous and co-ordinated action, the decisions arrived at by the Council should be communicated by the members to their respective Governments ; but that responsibility for action upon them should rest exclusively with the several Governments, and that this responsibility should extend to their severally giving or withholding grants towards Imperial expenditure, proportioned in accordance with some previously fixed and accepted standard of relative capacity.

#### REMARKS ON THESE PROPOSALS

16. From this account of these three proposals many details, more or less important, from a working point of view, have been omitted. Enough, however, has been said to make it possible for us to bring them all to the final and fundamental test to which all changes in the government of British peoples must ultimately be brought, the test, namely, of responsibility.



17. Within limits fixed and determined by interests common to all parts of the Empire, the Federal Council is to have sovereign legislative and executive powers, such powers as are now possessed, within the Empire, only by the existing Imperial Government. To whom, or to what body, is the Federal Council to be answerable for the use it makes of those powers? It is not to the Government of the United Kingdom, because it is not from it alone that it derives its powers. Its institution presupposes the sanction and consent to it of six separately organized peoples, all coming equally under its authority and jurisdiction, but possessing no common or regulated means of exercising control over it. It may be said that as its members are to be nominated by the several Governments of the Empire, each member or group of members, will be responsible to the nominating Government. This, for what it is worth, may be true. But it is not the nominee or group of nominees of any single Government that acts. It is the Council as a corporate body. To whom, then, is it, as a corporate body, to be answerable for what it does, or fails to do? There can be no answer to this question likely in the least degree to make the proposal acceptable to any British people. It is contrary to all their ideas of political freedom. The Federal Council would be a body practically irresponsible, and sooner or later it would assume all the characteristics of irresponsible power. Under it, moreover, all the great Departments of State concerned with Imperial interests would be withdrawn from Parliamentary control; and, sooner or later, they, in their turn, would assume all the characteristics of irresponsible bureaucracies.

18. The powers of the proposed Dominions' Council are more restricted in their scope. It is intended to be a means by which opinion in the Dominions on matters of Imperial concern shall have some direct and concerted influence on the policy and conduct of the Imperial Government; and the influence is to be made effective through the exercise of a power to give or withhold contributions of money towards the costs of Imperial services. In order to insure that, if the contributions are withheld, they should be withheld on general grounds approved by the majority of the Dominions, and not on grounds peculiar to one particular Dominion, it is proposed that the vote of a

majority of the Council shall be binding on the minority. In other words, it is proposed that the Council should act in a corporate capacity. The main argument against a Federal Council applies, therefore, with equal force against the proposal to create a Dominions Council. While the Council is to have power to bind the Dominions as a whole, there is to be no single body representing the Dominions as a whole to which it could be made answerable for the exercise of the power entrusted to it. The action of such a body must in course of time give rise to controversy, and just because there was no regulated means of settling disputes, what was intended as an instrument of union might easily become the parent of discord and disunion.

This objection might by itself be taken as final and conclusive ; but there are two other considerations bearing on the proposal to which attention ought to be directed. The powers of the Federal Council could be exercised only under the sanction of a statutory enactment. The powers of the Dominions Council, on the other hand, are intended to rest upon a purely voluntary and unsanctioned agreement. Here, therefore, a legal question of large importance arises. The Parliaments of the Dominions are not elected on Imperial issues ; nor, according to the spirit or the letter of their existing Constitutions, can they be so elected. The concerns of the Empire as a whole do not come within the legal scope of their present functions. Can they then legally vote money out of their revenues in support of services with which they have no legal concern, and for the conduct and maintenance of which another body in the Empire is actually responsible ? No opinion is here expressed on the question ; but obviously it is one that might and probably would be brought before the courts of law for decision. If it were, and if the decision was adverse, the defect of power might be remedied by a special enactment. But whether the peoples of the Dominions would consent to an enactment which would seem to bind them to give financial support to services over which they were to have only an indirect and uncertain control, must be left for them to determine.

The other consideration relates to the effect on the Imperial Government of the creation of a Council to which it was to be taught to look, on terms and conditions,

for a portion of its annual supplies. Could it take its stand between the Council and the Imperial Parliament, turning its ear now to the one and now to the other, without feeling that in the process its power of effective coherent action was sensibly and materially weakened? Whatever may be the answer given to this question, it is certain that it could not be impartial as between the two bodies. Its existence would continue to depend solely on the Parliament. In the case, therefore, of a conflict between Council and Parliament, the Government would almost inevitably side with Parliament. It must do that or resign. Nor is this all. If the advice of the Council was once finally rejected, if the offer of supplies on certain conditions was once finally refused, could the Council ever again meet with any feeling of respect for itself?

These are some of the considerations that ought to be well weighed before any part of the Empire gives its consent to the creation of a Dominions Council as an instrument of closer Imperial union.

19. The proposed Imperial Council is to have no executive power. Its members are to consult and advise on matters of Imperial concern, and among them on appropriations of revenue for Imperial services. Their advice is to be addressed to the several Governments of the Empire with a view to common action being taken by them upon it; and in this way, it is held, responsibility will be maintained and preserved. No doubt. But where, under the proposal, are we to look for the source and spring of the powers of the Imperial Government? Nominally, at least, that Government is to continue to depend on the Imperial Parliament. But in the persons of some of its members it is to sit in the Council as an equal partner with the other Governments of the Empire (a proposal in itself reasonable and unobjectionable) and its supplies are to be made to depend first, on its own acceptance of the advice given by the Council, and second, on the acceptance of the same advice by all the other Governments of the Empire. On the assumption that the members of the Council were guided in all their deliberations by omniscient wisdom; and on the further assumption that all the Governments of the Empire would accept with unanimity the advice given to them, and act simultaneously upon it, the Council



might conceivably be an instrument of good government ; but on any other assumption its intervention would lead to disorder and confusion, to a paralysis of concentrated action and responsibility on the part both of the Imperial and of the local Governments and Parliaments.

20. This examination of the so-called " half-way house " proposals, brief as it has been, ought to make us pause before we accept any one of them as a means of closer union, or as preparing the way for it. They are all new and untried methods of government. There is none of them that is a development of the spirit and working of British Constitutional life. They are all inconsistent with it. To accept any one of them would be to embark upon an unknown and uncharted sea. It would be to risk the whole future of the Empire. Hitherto, our constitutional life has developed on lines handed down to us by our forefathers. There is nothing in the conditions of our present problem to prevent us from continuing the development on the same lines, if we all so desire it. We have been accustomed to govern ourselves through the instrumentality of a Parliament and an Executive made responsible to it by its control over expenditure ; and it is only if we continue the custom, adapting it to the requirements of our time, seeking guidance in the present from the lessons of the past, that we can feel assured that we are proceeding upon safe, because known and familiar, lines of progress. We revert, therefore, to the point at which the discussion was left in paragraph II.

#### AN IMPERIAL PARLIAMENT

21. It was there stated that in order to provide for a closer constitutional union embracing all parts of the Empire, the Parliament of the United Kingdom must either divest itself of its functions as the local legislature of the peoples of that Kingdom, and create at least one new Parliament to carry on these functions ; or that it must divest itself or consent to be divested, of its functions as the power finally responsible for the government of the Empire and all the Dependencies, and create, or consent to the creation of, a new Parliament to which these functions should be entrusted. Let us first consider the latter of these, that is,

the creation of a new Imperial Parliament outside of, and in addition to, the existing constitutional fabric of the Empire.

22. It will help us to understand what its adoption would involve if we ask ourselves how the constitution of the new Parliament would be ratified. Two modes of procedure are possible. It might be ratified by a procedure like the procedure adopted by the peoples of the United States when they constituted their union in 1787. In this case a preliminary convention of representatives of the peoples of the Empire would meet to draft articles of union, which would subsequently be put into a legal form, and in this form be submitted to a new Convention for definitive ratification. Or, following all the precedents of the British Empire, the preliminary Convention would draft the articles of union, which would then be put into a legal form, be submitted in this form to a new Convention, and with its sanction and consent be ratified by, and become an Act of, the present Imperial Parliament.

23. The chief characteristic of our present Imperial Constitution, and that which specially distinguishes it from other Constitutions, is its elasticity, its inherent power of adapting itself to the growing needs of a constantly expanding community of peoples. It has borne tests and strains to which no other Constitution has ever been subjected; and, except in one great and disastrous instance, it has never hitherto failed to respond to all the demands made upon it. It has been the greatest and most successful instrument for the government of men that the world has hitherto known. In the task, therefore, which now lies before the peoples of the Empire, a prime object, which ought always to be kept steadily in view, is to make the changes in this Constitution as few as possible, and such as, while securing the common object, would least affect its present spirit and working. Keeping this in mind, and accepting it as a guiding principle, let us proceed to consider how the adoption of either of these modes of ratification would affect it.

24. If the former mode is followed, the Parliament will be the creature of the Convention. Its powers will be limited by the instrument which called it into being, and any change in them must be made by the authority from which they originally sprang. This is the characteristic of

all written, rigid, constitutions. In this way, therefore, we shall have made the largest and most fundamental change possible in the spirit and working of our Constitution. Parliament will have ceased to be the full and final embodiment of the sovereign will of the people. In normal times this might not be attended by any seriously detrimental consequences. But in a time of stress and strain, such as that through which the Empire is now passing, a time which tests the spirit and working of our Constitution as deeply as it tests the spirit and working of the peoples who live under it, we might be forced, we almost certainly should be forced, as Lincoln was forced in the American Civil War, to face the alternative of allowing the Executive to assume illegally all the powers which the emergency seemed to demand, or of submitting to irretrievable national disaster.

25. If, on the other hand, the latter procedure is adopted, a curious condition of things would arise. Under it the present Imperial Parliament would be called upon to ratify a measure by which it would deprive itself of all its powers as the sovereign authority over the Empire, and by which also it would tacitly consent to become simply the local legislature of the peoples of the United Kingdom. Nor is this all. The new Parliament would, in this case also, necessarily act under strictly defined and limited powers, powers which it could not exceed without the sanction of the body from which it had originally derived them. The Parliament of the United Kingdom, moreover, from which it had derived them, and upon whose sanction they rested for their legal exercise, would by itself and without reference to any other body or authority, have the sole and exclusive power of undoing what it had previously done ; and there is no possible constitutional device which could prevent it from using this power, if it so desired. But this would be, from every point of view, an impossible condition of things.

26. From these considerations it seems to follow that if the peoples of the Empire desire to retain the freedom and elasticity which is the pre-eminent characteristic of the constitution of their present Imperial Parliament ; if they desire to hand down unbroken to posterity all the historical traditions of the great Mother of Parliaments ; if they desire to trace their expanding liberties to the same great



source from which they and their fathers have hitherto derived them ; if they desire to avoid a breach in the continuity of the life of the Empire, then the task which lies immediately in front of them is not the creation of a new Imperial Parliament, but the adaptation of that which already exists to the conditions and requirements of their time.

#### THE POWERS OF THE IMPERIAL PARLIAMENT

27. On the assumption, then, that it is the first of the two alternatives mentioned in paragraph 11 that will be adopted in the constitutional reconstruction of the Empire, the next question that presents itself relates to the powers that are to be reserved to itself by the Imperial Parliament. Connected with it is the further question of the powers which are to be devolved on the new Parliament of the United Kingdom. In a general way the answer to both questions is clear and simple, and has been already indicated. The powers to be reserved will be the powers not now possessed by the Parliaments or peoples of the overseas Dominions : while the powers to be devolved will be the same as the powers which these Parliaments and peoples do now possess. Uniformity, so far as it is attainable, will, in this way, be got with the least possible disturbance of the existing system of government in the Empire.

28. The Imperial Parliament will continue to be what the existing Imperial Parliament actually is, the trustee of the sovereign power of the Empire. Acting in this capacity it will have powers to make laws in respect of the following matters, namely :

- (1) The Crown, or the succession to the Crown, or a Regency, or the Civil List of the Crown, or the prerogative of the Crown ; or
- (2) The Constitution of the Empire as a whole and in its several parts, except in so far as power to change its constitution has already been devolved on any part ; or
- (3) The relations of the several parts of the Empire to each other, except in so far as power to affect these relations has already been devolved, or any other

matter of common concern that may arise within the Empire ; or

- (4) The Government of India, or the other Dependencies of the Crown ; or
- (5) Relations with Foreign States, except in so far as power to affect these relations has already been devolved ; or
- (6) The making of peace or war or matters arising from a state of war ; or the regulation of the conduct of any portion of His Majesty's subjects during the existence of hostilities between Foreign States with which His Majesty is at peace, in relation to those hostilities ; or
- (7) The Navy or the Army ; or
- (8) The Supreme Court of Appeal for the Empire ; or
- (9) Dignities or titles of honour.

29. These, generally, will be the powers reserved to itself by the Imperial Parliament. But from them one power has been omitted, and among them one included, both of which demand more detailed consideration.

### IMPERIAL FINANCE

30. The power omitted relates to the provision of revenues required to meet the expenditure on Imperial services. Here we come on the crucial test of the practical character of any proposal to bring the several parts of the Empire into a closer organic union. It is the hinge upon which all other considerations ultimately turn. For there can be no closer organic union which does not carry with it financial liability. Nor, on the other hand, ought there to be financial liability which does not carry with it that direct and immediate control over expenditure which closer organic union alone can give. In dealing with the subject three points have to be borne in mind. The first is that the Dominions are still relatively new countries with no large stores of accumulated taxable wealth. The second is that the fiscal systems prevailing in the several parts of the Empire are not the same, and that they do not all rest on the same views of public interest or of public policy. And

the third is that the cost of Imperial services has hitherto been borne almost exclusively by the peoples of the United Kingdom, and that the peoples of the Dominions may not unnaturally shrink from assuming what would be for them a new and indefinite liability.

31. Confining ourselves for the moment to the first two of these, it seems to follow that there can be no unified system of Imperial taxation. An attempt to disturb the existing systems, to force the Dominions, for example, into a system conformable with ours, or ours into a system conformable with theirs, would inevitably lead to hopeless confusion in their and our finances. It would, moreover, be an infringement on existing constitutional liberties, and that at a point where they are more sensitive to infringement than at any other. It becomes necessary, therefore, to fall back on a proposal already alluded to in the paragraphs dealing with the Council schemes. It is that the responsibility for preparing and sanctioning the annual estimates of expenditure on Imperial services should rest solely and exclusively with the Imperial Government and Parliament and that the revenues required to meet the expenditure should be provided for by contributions from the local revenues of the several self-governing parts of the Empire in proportions periodically fixed in accordance with some previously accepted standard of relative capacity. This standard, it is suggested, should be population of European origin. It is already used for a similar purpose in several parts of the Empire; and it is easily understood and easily worked.

32. To this proposal strong objection was taken by Sir Wilfrid Laurier in the course of the discussion on Sir Joseph Ward's notion at the meeting of the Imperial Conference in 1911. He then said of it that "If there is one system which I think is indefensible it is the creation of a body which should have the power to expend at its own sweet will without having the responsibility of providing for the revenue to carry on the expenditure. . . . This body . . . would have the power to sit . . . and in its wisdom to say: 'This year the British Empire should spend £2,000,000, £5,000,000, £20,000,000, for defence, to be apportioned so much to the United Kingdom, so much to Canada, so much to Australia, so much to New Zealand, so much to



South Africa, and so much to Newfoundland': and then, as I understand, this would be remitted to the respective Governments concerned, and all the Governments would be dumb agents to carry out these resolutions. . . . The proposal seems to be absolutely impracticable." This is a serious objection, made all the more serious because it is Sir Wilfrid Laurier who urges it. If it is to be accepted as final, it seems to put an end to all projects of union involving common responsibility. Sir Wilfrid suggests that a body which is responsible for expenditure must also be responsible for devising ways and means of meeting it; and he implies that it is this responsibility that would put a real and effective check on its expenditure. But would his objection to the creation of an Imperial Parliament be waived if this responsibility were imposed upon it? It is impossible to believe that it would: for it would mean not only the concession to it of taxing powers concurrent with those possessed by the local legislatures, and thus a large abridgement of their local autonomy, but it would mean also inextricable confusion in their present financial systems. To a proposal involving such consequences, Sir Wilfrid Laurier would certainly not lend his authority. But what other alternative is there?

33. If we are not to accept the objection as final, we must look a little more closely into it. Is it consistent with the known facts of Parliamentary experience to maintain that the responsibility for devising ways and means is the only, or even that it is the true and really effective, check upon expenditure? The consideration and acceptance by a Parliament of estimates of expenditure necessarily precedes the consideration of a scheme of ways and means of providing for them. Given certain estimates, and ways and means must follow in their train and be determined by them. This will be assented to. It will be replied, however, that in sanctioning a certain scale of expenditure a Parliament is always checked and controlled by its concurrent responsibility for devising ways and means of providing for it. This has at least the appearance of being true. But is it so in reality? Is it not the wholesome fear of increasing the burdens of the taxpayer that is the final and effective check on all proposals involving increased expenditure? And would not this fear be as immediately

and as directly operative in a Parliament responsible only for sanctioning a certain scale of expenditure as if it were also at the same time responsible for devising ways and means of meeting it? But here again it may be replied that a consideration of ways and means of raising revenues sometimes becomes a matter of supreme importance to a people; and that this consideration may be forced upon them by increased expenditure. Yes; but assuming that the expenditure is justified, assuming that it is in the common interest and desired by the people, an assumption that underlies all proposals of all kinds in all democratic governments, then the need for revising an established system of taxation, brought about by increased expenditure, would not be avoided by imposing on the Parliament, responsible for sanctioning the increase, the duty also of carrying through the revision. It is admittedly not a duty which a Parliament representing the peoples of the United Kingdom and the overseas Dominions could perform without detriment to their several interests and liberties. Ultimately the reply to Sir Wilfrid Laurier's objection will depend on the reply given by these peoples to the question as to whether they can retain an effective control over expenditure sanctioned by a Parliament in which they are all represented, and which deals with interests in which they have all a common concern, while at the same time they retain to themselves severally the power of providing their shares of this expenditure by ways and means consistent with their several local interests and conditions. Here it is submitted that the answer can safely be an affirmative one.

34. Something further remains to be said about the part to be played in the raising of revenues for Imperial purposes by the local Governments and Parliaments. Sir Wilfrid Laurier says that they would be dumb agents in the carrying out of the will of the Imperial Parliament. That they would be mere agents is true; but not agents, primarily, of the will of the Imperial Parliament, but, in this as in other respects, of the will of their own peoples. These peoples, it is pre-supposed, would all have consented to become sharers in the government of the Empire through the agency of an Imperial Parliament in which they would all be directly represented, and which would be immediately

answerable to them for everything it does or fails to do. It is further pre-supposed that they would all have agreed that the revenues required to meet the expenditure on Imperial services should be provided in accordance with a plan which would leave their local fiscal autonomy untouched. For this plan the Imperial Parliament would not be responsible. It would be imposed upon it by the peoples; and it would come into existence pledged to adhere to it. How then can the responsibility or the dignity of the local Parliaments or Governments be injuriously affected by their acceptance of and adherence to it? In respect of it, would not Imperial and local Parliaments and Governments be on the same level? Would they not all equally be agents of the peoples in the furtherance of a common scheme of Government?

35. It has been asserted that a revenue system which depended for its supplies on the action of local Parliaments and Governments would provide an unsound basis of Imperial credit. To give assurance to the State creditor, the Imperial Government, in case of default by a local Government or Parliament, ought, it is held, to have the power of going behind this Government and of distraining on the goods of the individual taxpayers till its claims were satisfied. It is said that it is the possession of this power by the Government of the United Kingdom, for example, that gives confidence to the State creditor that the money which he has advanced to the State will be repaid. But this is to raise the law of distraint into a position of prominence and importance in the life of the State to which it has no claim. If a local Government fails to provide the revenues necessary to satisfy the claims of the Imperial Exchequer upon it, it will fail with the consent of its own Parliament; and with the consent, tacit or expressed, of its own people: and to bring an action of distraint against a people is not a feasible project. Even to suggest it is to misunderstand the spirit and working of British institutions. Grants of revenue by a Parliament to a Government, under the now existing system, depend on the confidence which the Parliament has in the Government. No confidence, no grants. The payment of taxes by a people depends on the confidence which the people as a whole have in the Government and the Parliament.



Here again, no confidence, no revenues. It is this spirit of confidence between Government and people that is the fruitful source of all our revenues ; and so long as it runs through the relations between the Imperial Government and the peoples of the Empire, the State creditor will ask for no better or surer guarantee of the solvency of his debtor. If it ceased to exist, he would certainly not find much comfort in the compelling power of the law of distraint. That law, if it has to be brought into operation, will be appealed to for its proper purpose against recalcitrant individuals and at the instance of the local Government.

36. We come now to the third point mentioned in paragraph 30. This was that, as the cost of Imperial services has hitherto been borne almost exclusively by the peoples of the United Kingdom, the peoples of the Dominions might not unnaturally shrink from assuming what would be for them a new and indefinite liability. Taken in conjunction with the first point, that the Dominions are still relatively new countries with no large stores of accumulated taxable wealth, it is suggested that their liability in relation to the cost of Imperial services should, for a period of years, say five or ten, be definitely limited ; and that after the lapse of the period the subject should be reconsidered. Thus, assuming population to be accepted as the standard of relative capacity to contribute, it might be agreed that the contributions of the Dominions should not, in any single year during the period, exceed a pound per head of their respective populations. It may be well to make this clear by an illustration. Assuming the European population of the self-governing parts of the Empire to be 60,000,000 (the figures are not precise) and that of this number the United Kingdom has 45,000,000, and the Dominions 15,000,000, then, if the cost of Imperial services in any single year was £60,000,000, each part would contribute a pound per head of its population towards it ; but that if the cost exceeds this sum, the excess, whatever its amount may be, would be borne, during the period, exclusively by the peoples of the United Kingdom. This does not appear to be in itself unreasonable ; and it would certainly facilitate the acceptance of financial liability by the Dominions.

INDIA AND THE OTHER DEPENDENCIES OF THE  
CROWN IN RELATION TO FINANCE

37. It will have been noticed that in what has been said about the financial powers of the Imperial Parliament no reference has been made to India or the other Dependencies of the Crown. This is explained by the fact that it is not proposed that they should bear any part of the cost of Imperial services, but that they should continue, as at present, to bear only the cost of administering their own peculiar interests and concerns. From this it necessarily follows that they would not be represented in the House of Commons. This exclusion, moreover, follows inevitably from the fact that they are not self-governing communities ; and that, whatever the future may have in store for them, they could not, at present, be made self-governing, without destroying the whole fabric of their life. On the other hand, India particularly, but the other Dependencies also in their own place and degree, have earned the right by the part they have played in the war, to have some regulated share in the counsels of the Empire ; and this share it is proposed to give them by providing for their representation in the House of Lords.

## DEBTS OF THE EMPIRE

38. It is suggested that liability for all debts contracted before the outbreak of the present war, whether by the United Kingdom or by the Dominions, should remain where it now rests. In other words, that the service of those debts should continue to be a local service administered by the local Governments. But the debts contracted during the war, and in prosecution of it, stand on a different footing. They have been incurred for a common purpose ; and, though not formally, yet in reality, with a common consent. It is, therefore, suggested that they should be consolidated, and that their service should become Imperial, and be administered by the Imperial Government. An examination of their several amounts, however, might prove that the charges upon them would have to be distributed among the several peoples in accordance with a special agreement, outside of and different from the distribution of the charges

on other Imperial services. In any case, if the war debts are to be consolidated, the charges upon them, so far as they would be borne by the Dominions, would not be affected by, and would be an addition to, the maximum of a pound per head of their respective populations, to which it has been proposed to limit their contributions towards other Imperial services.

#### THE ARMY

39. Power to make laws in respect of matters relating to the army was included among the list of powers reserved to itself by the Imperial Parliament. It is not, however, intended that this should restrict, or interfere with, the power which the local Parliaments now have of raising local military forces. But there must be a regular army subject to Imperial authority; and it would seem desirable that an agreement should be come to between the peoples of the self-governing parts of the Empire as to the conditions under which it would be enlisted, maintained and equipped.

#### COMPOSITION OF IMPERIAL PARLIAMENT

40. If all the peoples of the Empire are to share in its future government, and if the present Imperial Parliament is to continue to be the sovereign authority in this government, then changes in the numbers and composition of both of its Houses must be made. A large reduction in numbers is obviously expedient; and the character and scope of the functions, which it is proposed that it should reserve to itself, are such as to make this possible without injury to its representative character.

#### THE HOUSE OF COMMONS

41. According to the scheme of Constitutional Reconstruction suggested in these *Notes* it is intended that only the self-governing peoples of the Empire should be made liable for the provision of revenues required to meet expenditure on Imperial service. It is, therefore, proposed that neither India nor any of the other Dependencies should be represented in the House of Commons. This is consistent with the traditional principles of British constitutional life,



which has always been guided from its first beginnings by the idea that representation in the House of Commons must go hand in hand with financial liability. Accepting on this ground, the exclusion of India and the other Dependencies from the House of Commons, it is suggested that this House should consist of not more than 300 members, distributed among the several self-governing parts of the Empire in proportion to population of European origin; that these members should be returned by constituencies agreed upon and scheduled; and that they should be elected by the same electors and in the same manner as members returned by constituencies in the several self-governing countries to serve in their local Parliaments.

#### THE HOUSE OF LORDS

42. The composition of the House of Lords presents greater difficulty. It is in the part that it is to play in the government of the Empire that India and the other Dependencies must find the part that they are to play. The self-governing parts of the Empire must also have a stated share in its composition. The House of Lords will then represent opinion in the Empire in a fuller and more extended sense than will the House of Commons. Obviously, however, it cannot be a popularly elected body. Differences in respect both of conditions and of historical development in the various parts of the Empire forbid this. These differences no scheme of government can ignore or over-ride. They must be recognized, and recognized in such a way as to ensure that the House of Lords shall embody and give expression to them. More as a tentative suggestion of a plan having this object in view, and put forward for purposes of discussion rather than of acceptance, it is here proposed that the House of Lords should consist of a number of members not exceeding the number of the House of Commons; that of this number the Peers of the Realm should have the right of electing from among themselves a fixed and considerable proportion; that the Executive Government of the United Kingdom should have the right of nominating a fixed number; that the Executive Governments of the overseas Dominions should have a distributed right of nominating among them a number equal to the number nominated by the Executive Government of the

United Kingdom ; that the Governor General of India in Council should have the right of nominating a certain number, and that an equal number should be elected by the same electors and in the same manner as the elected members of the Legislative Council of India ; that a certain number should be nominated by the Rulers of the Native Indian States ; and finally that a right of nomination should be given also to other Dependencies of the Crown. It is further suggested that in no case should the right of nomination be conditioned by considerations of domicile, but that it should extend to subjects of the Crown domiciled in any part of the Empire.

#### TERM OF OFFICE

43. The members of the House of Lords should have the same term of office as members of the House of Commons, and during their term of office they should all alike enjoy the status and privileges of Peers of the Realm.

#### RELATIVE POWERS OF THE TWO HOUSES

44. Subject to the condition that the House of Commons must possess sole power and authority over expenditure, the powers of the two Houses and their relations to one another should be such as they were before the passing of the Parliament Act.

#### CHANGES IN THE CONSTITUTION OF THE UNITED KINGDOM

45. The changes in the Constitution of the United Kingdom involved in the reconstruction of the Constitution of the Empire affect only the peoples of the United Kingdom. It is not proposed, therefore, to deal with them in these *Notes*. They will be dealt with in a subsequent series.

#### SUMMARY

46. The conclusions arrived at in the preceding paragraphs may be summarized as follows :—

(1) That throughout the Empire there is a strong desire

for a closer organic union of its several parts than now exists.

- (2) That the conditions and requirements of our time make it expedient to consider by what means this desire can be realized without detriment to the existing fabric of the Empire or injury to the spirit by which it is now cemented and held together.
- (3) That the proposal to create an extra-constitutional body as a means towards this end is a proposal that ought to be rejected as certain to weaken the operation of the principle of responsibility, or to destroy the efficiency of Government, or both, and that if proposed as a half-way house there is no incentive to continue or complete the journey.
- (4) That the only safe and assured means of Constitutional union among British peoples is the accustomed and familiar means of a Parliament with an Executive responsible to it.
- (5) That the Parliament ought not to be a new body outside of, and in addition to, the existing constitutional fabric of the Empire, but should be the present Imperial Parliament after it had divested itself of its functions as the local legislature of the peoples of the United Kingdom, and had provided for the fulfilment of these functions by the creation of a new Parliament or Parliaments for the United Kingdom itself.
- (6) That the powers of the Imperial Parliament should be the powers not now possessed by the Parliaments of the Dominions, and that the existing autonomy of these Parliaments should not be interfered with.
- (7) That expenditure on Imperial services should be determined and approved solely by the Imperial Parliament, and that it should be met by contributions from the several self-governing parts of the Empire proportioned in accordance with some previously accepted standard of relative capacity ; that this standard should be population of European origin, but that for a term of years the overseas Dominions should not be called upon



- to make contributions in any single year in excess of a pound a head of their respective populations.
- (8) That debts incurred since the outbreak of the war, and in prosecution of it, by the several self-governing parts of the Empire should be consolidated, and become an Imperial charge, subject, however, to an agreement as to the distribution of the charge among the several parts.
  - (9) That the Imperial House of Commons should consist of 300 members representing constituencies in the several self-governing parts of the Empire, the number of constituencies in each part being in proportion to population.
  - (10) That the House of Lords should consist of a number of members not exceeding that of the House of Commons, and that in it all parts of the Empire should be represented.
  - (11) That the members of the two Houses should have the same term of office.
  - (12) That the powers of the two Houses, and their relations to one another, should be such as they were before the passing of the Parliament Act, subject, however, to the supremacy of the House of Commons in matters relating to finance.

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